No. 197

In the Supreme Court of the United States

OCTOBER TERM, 1957

ARKANSAS PUBLIC SERVICE COMMISSION, APPELLANT

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

MOTION TO AFFIRM

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Appellees United States of America and Interstate Commerce Commission, pursuant to Rule 16, paragraph 1 (c), of the Revised Rules of this Court, move that the final judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of a three-judge district court (convened pursuant to 28 U. S. C. 2284 and 2325) insofar as it upheld the validity of the order of the Commission issued September 4, 1956, in Docket No. 31660, *Arkansas Intrastate Freight Rates and Charges*, reported at 298

I. C. C. 547.[1] The Commission's report is annexed to this motion as an appendix.

The proceeding grew out of and is predicated upon certain general revenue proceedings in which the railroads throughout the United States were authorized to increase their interstate freight rates and charges in order to meet substantially increased operating expenses.[2] The Commission's order here involved authorized the railroads operating in Arkansas to increase their intrastate rates in that State, on certain commodities, to the level of the interstate rates previously authorized by the Commission.

Shortly after the Commission had ordered the general increases in interstate freight rates, the railroads operating in Arkansas requested the Arkansas Public Service Commission to grant similar increases in intrastate rates. The State Commission allowed the increases except on sand and gravel, crushed stone, asphalt rock, coated stone, and related items forming the group of commodities classified for rate purposes

[1] The district court held invalid only that portion of the Commission's order which required an increase in the intrastate rate on crushed stone used for fluxing purposes in the manufacture of aluminum. In all other respects, the district court upheld the Commission's order; however, the court disagreed with the finding of undue preference and prejudice which the Commission said existed with respect to sand and gravel, but nevertheless sustained the order as to those commodities on the ground of undue discrimination against interstate commerce.

[2] These proceedings include:

Ex Parte 166—269 I. C. C. 33, 270 I. C. C. 81, 93, and 403.

Ex Parte 168—272 I. C. C. 695, 276 I. C. C. 9.

Ex Parte 175—280 I. C. C. 179, 281 I. C. C. 557, 284 I. C. C. 589, 289 I. C. C. 395, 292 I. C. C. 23, 297 I. C. C. 17.

and known collectively as road building aggregates, and cement. Appellee railroads then petitioned the Interstate Commerce Commission, pursuant to Section 13 (3) and (4) of the Interstate Commerce Act, for authority to increase the intrastate rates on the excepted commodities.

After extensive hearings, the Commission granted the requested authority on the basis of its findings: (1) that the conditions incident to the intrastate transportation of freight in Arkansas were not more favorable than those incident to the interstate transportation of freight between points in that State and points in adjoining States; (2) that the percentages by which the interstate rates had been increased were just and reasonable; (3) that the existing intrastate rates on the excepted commodities were lower than the interstate rates on the same commodities between points in Arkansas and points in adjoining States; (4) that such intrastate traffic failed to produce its fair share of the revenue required by the railroads to enable them to provide adequate and efficient service; (5) that the intrastate rates were unjustly discriminatory as against interstate commerce; (6) that with respect to sand and gravel the present intrastate rates are causing undue and unreasonable preference and advantage to intrastate shippers and localities and undue and unreasonable prejudice and disadvantage to interstate shippers and localities; (7) that the preference, prejudice, and discrimination should be removed by applying to the intrastate rates the same percentage increases as had been applied to the interstate rates; and (8) that the increases thus made in

the intrastate rates would not result in unjust or un reasonable rates, and would substantially increase th carrier's revenue (*Arkansas Intrastate Freight Rate and Charges, supra,* pp. 560–561).

On review, in an opinion by Mr. Justice (then Cir cuit Judge) Whittaker, the three-judge distric court sustained the Commission's order insofar as i authorized the railroads to increase their intrastat rates on sand and gravel, crushed stone, other road building aggregates and cement, and reversed th Commission with respect to its finding as to crushe stone used for fluxing purposes in the manufactur of aluminum.[3]

ARGUMENT

Section 13 (4) of the Interstate Commerce Act[4] au thorizes the Commission to prescribe new intrastat

[3] No appeal is being taken by the Government from the de cision setting aside the order in part.

[4] Section 13 (4) (49 U. S. C. 13 (4)) reads as follows:

"Whenever in any such investigation the Commission, afte full hearing, finds that any such rate, fare, charge, classifi cation, regulation, or practice causes any undue or unreasonabl advantage, preference, or prejudice as between persons or lo calities in intrastate commerce on the one hand and interstat or foreign commerce on the other hand, or any undue, unrea sonable, or unjust discrimination against interstate or foreig commerce, which is hereby forbidden and declared to be un lawful, it shall prescribe the rate, fare, or charge, or the maxi mum or minimum, or maximum and minimum, thereafter t be charged, and the classification, regulation, or practice there after to be observed, in such manner as, in its judgment, wil remove such advantage, preference, prejudice, or discrimination Such rates, fares, charges, classifications, regulations, and prac tices shall be observed while in effect by the carriers partie to such proceeding affected thereby, the law of any State o the decision or order of any State authority to the contrar notwithstanding."

rates if it finds that existing intrastate rates cause either (1) any undue or unreasonable advantage, preference, or prejudice against persons or localities in interstate commerce, *or* (2) any undue, unreasonable, or unjust discrimination against interstate commerce. Therefore, an order issued by the Commission under Section 13 (4) is valid if it is sustainable upon either of the statutory conditions. See *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 579; *Ohio* v. *United States*, 292 U. S. 498, 501; and *King* v. *United States*, 344 U. S. 254, 269.

In *King* v. *United States, supra*, this Court held (pp. 270–271) that a Commission order, designed to remove unjust discrimination against interstate commerce, which increased Florida intrastate rates to the level of the interstate rates, was supported by findings which were essentially the same as those in the instant case.

1. Appellant urges (Juris. St. 5) that the district court erred in allegedly holding that the Commission may consider the evidence introduced, and findings made, in a Section 15a (2) general revenue case (*Ex Parte* 166, 168, 175) in reaching a determination as to whether a particular rate in a Section 13 (4) case is contributing its fair share of the earnings. The short answer to this contention is that the district court did not so hold.

Preliminarily, the court stated (147 F. Supp. at 463) that it had carefully read and considered the three-volume transcript of the evidence and the 91 lengthy exhibits adduced before the Commission; that "It may be admitted that this evidence, on the

issue of reasonableness of the existing intrastate rates and upon the issue of the rail carriers' needs for the additional revenue to be produced by the increases * * * would perhaps not be sufficient to support a like order in a fully developed rate case"; but that "the purpose of this case is to eliminate a discrimination against interstate commerce by increasing the intrastate rates to the level of the interstate ones" to the end that the interstate rates will bear their fair share of the cost of adequate rail service. The court then stated (p. 463):

> Here the Commission has applied to the Arkansas intrastate rates the same conclusions it reached, in Ex Parte Nos. 166, 168 and 175, as to the need of the rail carriers for increased revenue on a national basis and has distributed the burden within Arkansas on the same lines it followed when estimating the revenues available in the southwestern territory from intrastate as well as interstate operations, as was done in Florida and approved by the Supreme Court in the King case, 344 U. S. at page 272, 73 S. Ct. at page 269, and here, as in that case, "The evidence which forms the basis of the Commission's nationwide order becomes the natural basis for its [Arkansas] order." King case, 344 U. S. at page 272, 73 S. Ct. at page 269.

The court concluded that "we are fully convinced that the evidence adequately supports the Commission's findings as to the need for, and the reasonableness of, the ordered increases in Arkansas intrastate rates as they existed at the time of the hearing before the Commission in March 1955."

Thus, the court below did not hold that, in considering whether a Section 13 (4) finding is supported by sufficient evidence, the evidence introduced in the Section 15a (2) general revenue hearing is to be considered. The court below did not state, nor is there anything in the Commission's report, which would indicate, that the Commission went beyond the record in the instant case and considered the evidence in the Section 15a (2) general increase cases. Rather, the court below simply sustained the Commission's reiteration of its conclusion, reached in the prior general revenue proceedings, that the higher level of interstate rates which it had authorized was necessary to enable the railroads to meet increased operating expenses. Even now, the appellant does not challenge that conclusion.

2. Appellant also contends (Juris. St. 7–9) that the evidence does not support the finding of the Commission that the intrastate rates and charges fail to produce their fair share of the revenue required by the railroads to enable them to provide adequate and efficient service. In support of this contention, appellant asserts (Juris. St. 8) that, even though evidence was introduced to show revenue received, no evidence was introduced to show the expenses attributable to the transportation of the commodities involved or which would reflect the operating ratio; that "before it could be proved that any particular rate of any class of commodity is not contributing its fair share of earnings it must be shown what the particular earnings or profits are for the class of commodity";

and that this could be done only (a) by "comparing the intrastate profit for hauling this particular class of rates with other classes of shipments," and (b) by "the use of operating ratios." Accordingly, appellant concludes that, since the Commission did not compare the expenses attributable to the movement of the commodities here involved with the income derived therefrom, it could not "determine that the rates were not producing a fair profit."

Appellant's real contention is that there must be a separation of interstate and intrastate costs and revenues. It ignores the principle laid down by this court in *Illinois Commerce Commission* v. *United States*, 292 U. S. 474, 483–484, that:

> Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues. * * *

And see *King* v. *United States*, 344 U. S. 254, 273.

It is undisputed that in 1939 the interstate and intrastate rates here involved were on the same level, and that since that date there have been very substantial increases in railroad operating costs. By 1955, the intrastate rates involved were substantially lower than the corresponding interstate rates (298 I. C. C. 553–557). And the Commission (298 I. C. C. 551–552) made detailed findings leading to its conclusion that "Operating conditions in Arkansas are

no more favorable than in or through the adjoining States. In several respects they are less favorable." Appellant expressly concedes that the evidence supports the findings of the Commission from which it drew this conclusion (Juris. St. 9).[5]

3. Another contention made by appellant (Juris. St. 10–13) is that the district court erroneously held that the burden of proving whether the intrastate rates are discriminatory rested upon the plaintiff (appellant) rather than upon the railroads. Appellant bases this contention on the assertion that the court required only "the mere showing of a disparity" between interstate and intrastate rates.

The court, however, made no such holding. As the court noted, the Commission's order predicated upon further express findings that the conditions incident to the intrastate transportation of freight in Arkansas are not more favorable than those incident to interstate transportation between Arkansas and adjoining States, that the related interstate rates are just and reasonable, that the increased intrastate rates ordered by the Commission will not result in unreasonable rates or in rates unreasonable in relation to interstate rates, that the increased intrastate rates will add approximately $1,000,000 to the railroads' revenues, and

[5] Appellant contends (Juris. St. 9–10) this similarity of transportation conditions can be established only by "a comparison of the operating ratios of the interstate operations for these particular commodities with the operating ratios of the intrastate operations." This is mere repetition of the contention, discussed above, that the fair share of revenue to be contributed by intrastate traffic can be determined only after a separation of intrastate and interstate costs and revenues.

that lesser rates would continue to cast an undue burden upon interstate commerce. These and related findings (298 I. C. C. 560–561) fully comply with *King* v. *United States, supra,* and refute the contention that the burden of proof was shifted to appellant.

4. Appellant similarly contends (Juris. St. 14–16) that the district court erroneously held that proof of discrimination is not required in a Section 13 (4) proceeding. According to appellant, "The court, in effect, admitted that there is no evidence in the record to support a finding that the particular class of rates are not contributing a reasonable profit * * *."

The lack of substance in such assertions is readily shown by an examination of the court's opinion. It is clear that the court found that the evidence supported the Commission's finding of discrimination against interstate commerce (147 F. Supp. at 463–464), although it admitted that it may be "that this evidence, on the issue of reasonableness of the existing intrastate rates and upon the issue of the rail carriers' needs for the additional revenue * * * though rather extensive, would perhaps not be sufficient to support a like order in a fully developed rate case". (citing the *King* case, *supra,* and *Illinois Commerce Commission* v. *United States,* 292 U. S. 474, 483–484). Under the decisions of this Court, discussed above (*supra,* pp. 5–6), the reasonableness of the increased rates prescribed by the Commission requires no justification in the "rate case" sense, where there are findings, supported by substantial evidence, that the interstate and intrastate rates on the commodities involved were on a parity basis historically, that despite substantial

cost increases the intrastate rates have become substantially lower than the corresponding interstate rates, and that the conditions of intrastate transportation are not more favorable than those of interstate transportation.

5. Appellant's remaining contention (Juris. St. 16–19) is that there is a conflict between the decision below and *Mississippi Public Service Comm.* v. *United States,* 124 F. Supp. 809 (S. D. Miss.), affirmed *per curiam,* 349 U. S. 908. We submit that there is no such conflict. In the *Mississippi* case, the district court found that the evidence in the record, considered as a whole, was insufficient to sustain the Commission's findings. The district court in the instant case found that the evidence supported the Commission's findings.[6]

CONCLUSION

The court below subjected the Commission's order to meticulous review. It is respectfully submitted

[6] There is no more logic in appellant's contention in this respect than there would be in an argument that the *Mississippi* case (affirmed in April 1955) is in conflict with *Louisiana Public Service Comm.* v. *United States,* 125 F. Supp. 180 (E. D. La.), affirmed *per curiam* (November 1954), 348 U. S. 885. The two cases involved similar rate increases on virtually the same commodities. In the former, however, the district court held that the finding that the increased intrastate rates would increase total revenues was *not* supported by substantial evidence; in the *Louisiana* case, the district court held there *was* substantial evidence to support that finding. This Court affirmed both judgments. The *Mississippi* decision, therefore, is no more a controlling precedent in the instant case than is the *Louisiana* decision, or, for that matter, the more recent decision in *North Carolina* v. *United States,* 128 F. Supp. 748 (E. D. N. C.), affirmed *per curiam* (October 1955), 350 U. S. 805, which also upheld an order raising intrastate rates.

that the decision below, insofar as it sustains that order, is correct and that this appeal presents no substantial question. The judgment of the district court should be affirmed.

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Solicitor General.

VICTOR R. HANSEN,
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General Counsel,
SAMUEL R. HOWELL,
Associate General Counsel,
Interstate Commerce Commission.

JULY 1957.

APPENDIX

INTERSTATE COMMERCE COMMISSION

No. 31660

ARKANSAS INTRASTATE FREIGHT RATES AND CHARGES

Decided May 7, 1956

Intrastate freight rates and charges in Arkansas on specified commodities found to cause unjust discrimination against interstate commerce, and undue prejudice and preference as between persons and localities in interstate and intrastate commerce. Basis for the removal thereof prescribed.

Clyde W. Fiddes, Ned A. Stewart, R. H. Stahlheber, Joe C. Barrett, A. J. Baumann, Harry E. Boe, A. L. Burford, Wm. E. Davis, W. J. Hickey, Paul V. Lutz, John W. Murphy, and *Toll R. Ware* for respondents.

E. K. Minear for intervener in behalf of respondents.

Lewis M. Robinson, John R. Thompson, H. J. Conley, and *J. C. Murray* for Arkansas Public Service Commission, other departments of the State of Arkansas, and shippers opposing respondents.

L. E. Galaspie, T. C. Taylor, Marion M. Caskie, C. E. Childe, Woodson P. Houghton, Maxwell Caskie, Fletcher D. P. Plumley, Jack A. Williams, Sr., and *William W. Collin, Jr.,* for protestants.

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by the protestants, to which the respondents replied, and the issues were argued orally. Exceptions and requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

This is an investigation under section 13 (4) of the Interstate Commerce Act concerning the lawfulness of Arkansas intrastate freight rates and charges.[1] In response to a petition filed on October 13, 1954, on behalf of the principal railroads serving Arkansas, we entered upon an investigation for the purpose of determining whether freight rates and charges of the common carriers by railroad, or any of them, operating in Arkansas, for the intrastate transportation of property, made or imposed by the authority of that State, by reason of the failure of such rates and charges to include increases corresponding to those authorized by us for interstate traffic in Ex Parte Nos. 166,[2] 168,[3] and 175,[4] cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate and foreign commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce;

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[1] Rates, charges, and increases are stated per 100 pounds, unless otherwise indicated.

[2] *Increased Freight Rates, 1947*, 269 I. C. C. 33, 270 I. C. C. 81, 270 I. C. C. 93, 270 I. C. C. 403.

[3] *Increased Freight Rates, 1948*, 272 I. C. C. 695, 276 I. C. C. 9.

[4] *Increased Freight Rates, 1951*, 280 I. C. C. 179, 281 I. C. C. 557, 284 I. C. C. 589, 289 I. C. C. 395, 292 I. C. C. 23, 297 I. C. C. 17.

and, if so, what rates and charges, or what maximum or minimum, or maximum and minimum rates and charges, shall be prescribed to remove any unlawfulness found to exist.

All common carriers by railroad operating in Arkansas subject to our jurisdiction were made respondents. Copies of our order of investigation and notice of hearing were served upon each of them, and upon the State of Arkansas and the Arkansas Public Service Commission, hereinafter called the Arkansas commission.

Representatives of the Arkansas commission, the Arkansas State Highway Commission, the Arkansas State Highway Department, the Aluminum Company of America, the Reynolds Metals Company, the Ideal Cement Company, and various other shipper interests intervened in opposition to the petition of the respondents. The American Limestone Company intervened and presented testimony in support of the respondents.

On December 5, 1946, in Ex Parte No. 162,[3] we authorized for interstate transportation general increases, among others, of 20 percent in the basic rates within western territory, including Arkansas, and between the territory and other territories, except official territory, and 22.5 percent between official territory and points in other territories subject; however, to certain exceptions as maxima or specific increases on commodities described in the appendix to that report. Upon petition of these respondents to the Arkansas commission, they were authorized to make effective corresponding increases on all commodities for intrastate transportation within that State.

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[3] *Increased Railway Rates, Fares, and Charges, 1946*, 266 I. C. C. 537.

Upon our authorization of increases in rates for interstate transportation in Ex Parte Nos. 166, 168, and 175, the respondents likewise sought authority from the Arkansas commission to apply corresponding increases in their intrastate rates and charges applicable on intrastate transportation. That commission, while authorizing most of such increases, excepted entirely or partially the increases on certain commodities. Such excepted items include sand, gravel, and related commodities, crushed stone, agricultural limestone in open-top cars; asphalt rock, stone, et cetera, coated; and silica sand in boxcars. A detailed list of the commodities, and the treatment accorded them by us in Ex Parte Nos. 166, 168, and 175, and by the Arkansas commission, is shown in the appendix hereto.

The respondents estimate that the same increases which we authorized on interstate transportation if made in the intrastate rates would produce additional revenues exceeding $1 million annually.

The Arkansas commission and the other protestants urge that this proceeding is premature in that the respondents have not exhausted their legal efforts to obtain the desired increased rates under the Arkansas statutes, since no appeal was taken to the courts from the adverse orders of that commission. In *Alabama Intrastate Fares, 1948*, 273 I. C. C. 627, 635, we stated that where, as here, a bona fide effort by the respondents has been made to justify the increased charges before the State commission, it is not essential that the State commission make an affirmative finding, citing *Florida* v. *United States*, 282 U. S. 194, 210. Our function in administering section 13 (4) of the act is not that of an appellate tribunal. It appears to us that the respondents have exhausted their remedy before the Arkansas commission, and that the issues raised in their petition are properly before us.

Arkansas economic conditions.—In 1939 the total income payments to individuals in Arkansas were approximately $478,000,000. By 1951 such payments rose to $1,750,000,000, or an increase of 268 percent. The per capita income payments increased from $246 in 1939 to $924 in 1951, or 276 percent. In the United States as a whole the respective increases were 244 and 194 percent for the same periods. The total income payments in Arkansas in 1953 rose to $1,793,000,000, an increase of 275 percent over 1939, and the income payments per capita rose to $939, an increase of 282 percent over 1939. Cash receipts in Arkansas from marketing of livestock, and products, and of crops, rose in the same period from $136,337,000 to $563,298,000, or by 313 percent. The value of all mineral production rose from $29,573,000 in 1939 to $118,693,000 in 1951, an increase of 301 percent. Bank loans increased from $74,700,000 in 1939 to $313,200,000 in 1953, or by 319 percent, and in that period bank deposits increased from $176,500,000 to $944,600,000, or by 435 percent.

Respondent's property investment and revenues.—The gross system property investment, for the several class I railroads serving Arkansas, in road and equipment used in transportation service, plus cost, materials, and supplies, as shown by their books on an average as of the beginning and end of each year (except for 1954, which is shown as of the beginning of the year), was $1,967,325,172 in 1948 and increased each year to $2,270,145,682 in 1954. The net property investment representing gross investment less recorded depreciation and amortization, was $1,614,234,219 in 1948 and increased each year to $1,866,058,308 in 1954. The rates of return on net investments, in percentages, were 5.33 in 1948, 4.16 in 1949, 5.33 in

1950, 4.14 in 951, 5.31 in 1952, 5.13 in 1953, and 4.27 in 1954.

The total operating revenues of the class I railroads serving Arkansas were $659,672,345 in 1948, $585,066,520 in 1949, $639,871,608 in 1950, $702,269,450 in 1951, $741,271,942 in 1952, $729,667,795 in 1953, and $643,274,877 in 1954. Thus, the operating revenues were lower in 1954 than in 1948. The total operating expenses increased from $475,047,923 in 1948 to $480,556,222 in 1954, and the net railway operating income of $85,971,743 in 1948 declined to $79,639,635 in 1954. The operating ratios of these carriers for the years 1948 to 1954, inclusive, percentagewise, were, respectively, 72.01, 74.77, 70.29, 75.02, 71.36, 73.40, and 74.70.

Railroad operating expenses.—Employees' wages and salaries account for over 60 percent of respondents' operating expenses. In 1940, the class I railroads serving Arkansas had an average of 65,922 employees, as compared with 85,627 in 1947 and 79,372 in 1953. The total straight-time compensation aggregated $111,265,357 in 1940, $226,918,370 in 1947, and $315,673,812 in 1953. The average straight-time hourly rate of compensation was 70 cents in 1940, as compared with $1.14 in 1947 and $1.84 in 1953, or an increase in 1947 of 62.86 percent over 1940, which in 1953 had risen to 162.86 percent, a further increase of 61.4 percent over 1947. Since 1953 there has been an additional wage increase of 5 cents an hour to operating employees and also a so-called welfare privilege granted to nonoperating employees.

Expenditures for materials and supplies account for another 30 percent of the respondents' operating expenses. The average unit prices of railway materials and supplies, other than fuel, in 1954 were 148.3 percent higher than in 1940. In that period there

was an increase of 110.5 percent in the price of fuel, and an increase of 132.6 percent in materials and supplies.

In 1939, the ton-mile revenues which accrued to the respondents on all interstate and intrastate traffic averaged 1.016 cents in Arkansas, as compared with 1.021 cents in the western district and 0.973 cent in the United States. In 1953, respective ton-mile revenues were 1.419, 1.431, and 1.478 cents.

As proof that the increased operating ratio was not due to inefficient operations, the respondents presented evidence as to the operating efficiency of the class I railroads serving Arkansas. The average capacity of their freight cars increased from 46.3 tons in 1940 to 50.7 tons in 1952. Similarly, comparing 1940 with 1954 (11 months), the net tons per loaded car increased from 24.4 to 29.3, the average freight trainloads increased from 713 to 1,220 tons, the freight-train speeds per hour increased from 18 to 20.3 miles, and the gross ton-miles per freight-train hour (excluding locomotive and tender) increased from 33,708 to 57,842. It is emphasized that this improved efficiency reflects increased investment in transportation property and equipment. For example, the Missouri Pacific Railroad Company (Guy A. Thompson, trustee), with 26 percent of its mileage in that State, expended $11,053,401 for new equipment and $3,258,881 for rehabilitation of freight cars in 1954. It was estimated that approximately $20,150,000 would be spent for those items in 1955. During the period 1946–54 the Missouri Pacific expended $75,201,911 for additions and betterments to road property and $139,211,414 for equipment, a total of $214,413,325. That carrier in 1952, 1953, and 1954 spent for betterments in Arkansas $1,590,000, $1,637,000, and $1,832,000, respectively, and its improve-

ment program in Arkansas for 1955 was estimated as aggregating $3,300,000.

Intrastate operating conditions.—The evidence shows that both interstate and intrastate traffic is handled in the same types of cars in the same through or local trains, that such traffic moves over the same tracks and through the same terminal yards, and that the same employees handle the shipments irrespective of the proportion of interstate or intrastate traffic. Intrastate traffic usually moves in local trains, which the respondents state results in higher operating costs. Such shipments usually require shorter hauls than interstate shipments, and the terminal expenses incurred in placing empty cars and pulling loaded cars at origin and in placing the cars at destination are relatively larger in proportion to the line-haul revenue derived from these hauls; local train crews are paid at higher rates than the through-freight crews; the local trains incur more overtime; a larger proportion of intrastate traffic is delivered on team tracks requiring more detailed spotting for loading and unloading than does interstate traffic, which usually is placed on the customer's track or at its warehouse; and intrastate traffic moves generally over branch lines which are more expensive to operate and maintain.

Operating conditions in Arkansas are no more favorable than in or through the adjoining States. In several respects they are less favorable. The so-called Arkansas full-crew law requires an additional brakeman in train service, and a third helper on switch engines. This requirement cost the Missouri Pacific $1,169,888 in wages and payroll taxes in 1953. No corresponding cost is encountered elsewhere on the Missouri Pacific's lines. It was pointed out also that because the Missouri Pacific operates parallel to o

across three major rivers in Arkansas, its lines there are subject more than elsewhere to floods, washouts, and other high-water conditions, making it substantially more expensive to operate and maintain. During the period 1941 to 1954 that road was compelled to spend $1,568,728 for flood protection or restoration in Arkansas. Evidence was presented with respect to the ruling grades on the Missouri Pacific's main line and branch lines, indicating that operations in Arkansas are more expensive than other operations on its lines.

For the purpose of showing that both the traffic volume and the revenue therefrom here considered is of substantial importance to the Arkansas railroads, it appears that in 1953 the principal roads originated in Arkansas 3,940,755 tons of interstate and intrastate traffic. This represented 28.86 percent of their total system carload tonnage. The total intrastate volume of this traffic terminated in Arkansas in 1953 was 2,861,736 tons, or 70 percent of the tonnage of these commodities originated in Arkansas.

A 12-month traffic study, covering the period from October 1, 1953, through September 30, 1954, is exhibited to show the revenue loss of the respondents by reason of the refusal of the Arkansas commission to permit increases in freight rates and charges to the same extent as authorized by us in Ex Parte Nos. 166, 168, and 175. This study discloses that of the excepted items, 2,875,148 tons were terminated in Arkansas during the period, on which the actual freight charges were $3,218,791. The full increases authorized in Ex Parte Nos. 166, 168, and 175 for application on interstate traffic if applied to the rates on this intrastate traffic would have produced freight charges of $4,247,665, or $1,028,874 greater than the revenue which accrued.

Sand, gravel, crushed stone, and related commodities.[6]—Of the commodities considered in this proceeding, sand, gravel, crushed stone, agricultural limestone, and related commodities, all of which take the same rates, are the principal ones from the standpoint of volume and revenue to the respondents. Sand, gravel, and crushed stone are used in Arkansas mostly in building highways, and as such these commodities are referred to as road aggregates.

The respondents state that based on their experience the handling costs of crushed stone, sand, and gravel in intrastate movement is greater than that for commodities generally, because of the additional switching required; also, that the equipment used in transporting crushed stone, sand, and gravel is more costly than the boxcars used for most other commodities. A witness testified that the estimated annual maintenance cost for gondola-ballast cars used in such service is $960, as compared with $426 for steel boxcars, and when compared with flatcars and rack cars, the cost is 4 or 5 times greater.

In *Sand, Gravel, Crushed Stone, and Shells,* 155 I. C. C. 247, 284, we prescribed a reasonable maximum distance scale of rates on sand and gravel, crushed stone, agricultural limestone, and related commodities for interstate transportation which the Arkansas commission approved as a basis for intrastate application. The approved scale of rates was effective from October 17, 1929, until December 26, 1939, when the rail carriers voluntarily established a rate scale on a lower basis applicable to both interstate and intrastate traf-

[6] The related commodities are brickbats, crushed brick, broken saggers, crushed tile; chatt, roofing granules, crushed shells; cinders (coal) slag; clay, fire, crude, clay, shale; crushed sewer pipe, lime sludge, oystershell screenings, broken clay retorts, soil, and riprap.

fic. It is that lower scale to which the increases authorized in Ex Parte Nos. 162, 166, 168, and 175 for interstate transportation where applied, and to which the increases here sought are to be added.

For the 12-month test period previously referred to, 2,702,760 tons of sand, gravel, crushed stone, and agricultural limestone moved intrastate. This figure includes crushed stone moved for fluxing purposes, the rates on which are considered later in this report. In 1954, the total movement of crushed stone for fluxing purposes amounted to 744,169 tons. During a test period, July 11 to 17, 1954, intrastate shipments of sand and gravel were made to 48 destinations throughout Arkansas, and intrastate shipments of crushed stone moved to 18 destinations. In the same period, 11 interstate shipments of sand and gravel and 7 interstate shipments of crushed stone moved to destinations in Arkansas. A number of common points of destination are shown for the interstate and intrastate shipments made.

The respondents show actual shipments made during the test week as illustrative of the rate discriminations against interstate traffic and preference of Arkansas intrastate traffic. For example, an interstate shipment of sand and gravel from Fort Gibson, Okla., to Fort Smith, Ark., 69 miles, was charged a rate of $1.09 per ton, as compared with a rate of 80 cents a ton charged on an intrastate shipment from Little Rock to Arkadelphia, Ark., 66.9 miles. The 29-cent disparity is the result of the Arkansas commission's refusal to permit the respondents to apply the same rate increases on the intrastate traffic as were authorized and applied on like interstate traffic. Another example is a shipment from Fort Gibson, to Mansfield, Ark., 100.3 miles, on which a rate of $1.76 per ton was charged, as compared with a rate of $1.28

applicable intrastate from Little Rock to El Dorado, Ark., 131.2 miles. A shipper of sand and gravel located at Doniphan, Mo., about 10 miles from the Missouri-Arkansas State line, in 1947 shipped 70,000 tons into Arkansas; it is said that because of the nonapplication of the general rate increases to competitive Arkansas rates, the volume of this interstate traffic declined to 21,000 tons in 1954.

On shipments of crushed stone from Iron Mountain, Mo., to Osceola, Ark., for example, 189.6 miles, the interstate rate charged was $2.21, as compared with a rate of $1.42 charged on an intrastate movement of the same commodity from Little Rock to Marion, Ark., 130.4 miles. The base rate, including the Ex Parte No. 162 increase, was formerly $1.52 on the interstate movement and $1.34 intrastate, a difference of 18 cents. The present difference is 79 cents, or a net advantage to the intrastate shipper of 61 cents.

For the year 1953 and the first half of 1954, had the proposed increases applied on the crushed stone moved intrastate for highway purposes, additional revenues of $237,186.84 would have accrued. Stated on an annual basis, the revenue loss approximated $158,124.56.

A witness, who operates the principal plant in Arkansas producing crushed stone for highway purposes, testified concerning the revenue loss which, in his opinion, would result if traffic were to be diverted from rail to truck transportation in the event that the increases sought were added to the intrastate rates on crushed stone. He did not testify, however, that any of his shipments would be so diverted. A witness for the Arkansas Highway Department testified that for the year 1954, in his opinion, the gain in revenue to the respondents on the basis of the proposed in-

creases in rates on shipments of sand, crushed stone, and gravel made by that department would have been $159,460.29 for hauls over 50 miles, as compared to a loss of $269,254.81 for hauls of 50 miles or less. In opposing the increases sought on sand, gravel, and asphalt-coated crushed stone, the highway department takes the position that such increases would cause a substantial diversion of this traffic to motortrucks. Under the present rail rates on such road aggregates, the maximum distances for which trucks are used range from 25 to 30 miles. The department estimates that the probable effect of the increases on the use of the intrastate rail rates would be an increase in the range of truck use to 40 miles. The truck charges are shown as 4.5 and 5 cents a ton-mile. On this basis of comparison, the rail rate for a single-line haul of 30 miles is 53 cents a ton, whereas the truck charge for like hauls at 5 cents a ton-mile is $1.50 a ton, and at 4.5 cents is $1.35. If the authorized increases were applied, the single-line rail rate for that distance would become 73 cents. At 40 miles, the present rail rate is 58 cents and the truck charges at 4.5 and 5 cents a ton-mile are $1.80 and $2, respectively. The increased single-line rate proposed is 80 cents. At 100 miles the present rail rate is $1.09, whereas the truck charges at 5 cents a ton-mile would be $5, and at 4.5 cents, $4.50. The proposed increased rate would be $1.50. As distance increases, the spread between the rates and charges on these commodities, motor versus rail, becomes greater in favor of the rails.

Certain protestants, including the Arkansas commission and the Arkansas Highway Department, excepted to the examiner's failure to state certain other expenses, in addition to the line-haul transportation charges, for shipments by rail which are not borne by truck shipments. A typical example of such ad-

ditional expenses per ton by rail is the intrastate movement of crushed stone from Big Rock Stone Quarry to the Jacksonville Air Base, a distance of 21 miles, as follows: Switching, 30 cents; unloading, 20 cents; 1-mile haul to job site, 10 cents; and construction of unloading track, 20 cents. In all the examples shown, the distance involved in moving the sand, gravel, or crushed stone was less than 40 miles. The record shows that, even though the total transportation charges by rail were less than those by truck, frequently truck transportation has been used because of admitted advantages for short hauls. The respondents are depending principally upon the increased revenue obtainable from shipments of 40 miles or over. This is clear from the fact that the average hauls of the rail carriers for sand, gravel, and crushed stone range from 51.5 to 70 miles. With respect to hauls over 40 miles, the truck charges appear to be much higher than the rail line-haul charges, and, even with the proposed increases and attendant costs, it appears that the rail carriers should be able to compete effectively for this traffic.

During the 12-month test period, 18,459 tons of asphalt rock and stone, coated, were terminated in Arkansas. This commodity is also used in road construction and is thus referred to as a road aggregate. The actual revenue accruing to the respondents from this aggregate amounted to $25,098, or about $7,719 less than if the full interstate increases had been in effect on such intrastate traffic. The base intrastate rates in Arkansas on this commodity, prior to the general increases, were lower than the interstate rates. At 10 miles, the single-line-interstate base rate was 77 cents per ton, compared with an intrastate rate of 41 cents a ton. Because of the general increases on interstate traffic, the 77-cent rate became $1.37, while

the intrastate rate has increased from 41 to 56 cents. The respondents do not seek a change in the basic relationship of the interstate and intrastate rates, but rather a restoration of the former relationship by subjecting the intrastate rates to the same general increases that have been applied to the interstate rates.

Agricultural limestone for rate purposes is also included in this commodity group. It is used to improve the soil. The consumption of this commodity is on the increase in Arkansas and is recommended for use by governmental agencies, both Federal and State. A shipper operating a plant at River Mines, Mo., who ships agricultural limestone in open-top cars to Arkansas, testified that his company is in keen competition with shippers located in Arkansas and that since 1951 his company has suffered a 40-percent decline in the volume of shipments to Arkansas because of the disparity between the interstate and the intrastate rates. For joint-line movement, these disparities range from 32 cents per net ton for distances of 50 and over 40 miles to 69 cents for distances of 440 and over 410 miles. The Batesville White Lime Company has plants at Limedale Spur and Myersville Spur, Ark., and ships agricultural limestone to various points in Arkansas. This company competes with the shipper at River Mines, as well as with other interstate shippers. No diversion of future shipments to other modes of transportation was indicated by this intrastate shipper in the event the proposed increases are made effective.

Silica sand.—Silica sand is used chiefly in the manufacture of glass and glassware, and is produced at Guion, Ark., and points in Missouri, Oklahoma, and Texas. This commodity generally moves in boxcars and takes higher rates than ordinary sand moving in

open-top cars. During the 12-month test period, 24,700 tons of silica sand moved intrastate in Arkansas. The revenue therefrom was $57,837, or $23,497 less than if the increases sought had been in effect. On a 100-mile movement of silica sand in boxcars, the present interstate rate would be 54 percent higher than the intrastate rate. Here again, the base rates on intrastate movements are lower than the interstate base rates for comparable hauls, and with the full increases the Arkansas rates would still be below the level of the interstate rates.

No one appeared in opposition to the proposed increases on silica sand.

Cement.—The movement of cement within Arkansas during the 12-month test period amounted to 129,229 tons. Prior to the postwar general increases, the interstate and Arkansas intrastate rates on cement for corresponding hauls were on the same level. The Arkansas commission granted the same increases on cement as we had authorized in Ex Parte Nos. 162, 168, and 175. However, with respect to our authorization in Ex Parte No. 166, the intrastate increase was limited to 10 percent, maximum 4 cents per 100 pounds, rather than the 20-percent increase, maximum 4 cents per 100 pounds, authorized by us on like interstate traffic. Because of this partial increase, the revenue to the railroads was $56,016 less than would have accrued in the 12-month test period had the full increase been in effect on the intrastate shipments of cement made in that period.

The Ideal Cement Company operates the only cement plant in Arkansas. It is located at Okay Junction, on the line of the Graysonia, Nashville & Ashdown Railroad Company, which is owned by the cement company. All cement shipments from this plant move by rail, and the testimony indicates that

the shipper is not equipped for trucking. The present intrastate rates are from 1 cent to 3 cents per 100 pounds, depending upon the mileage block, less than the present interstate rates for like distances.

During the previously mentioned test week, intrastate and interstate shipments of cement were terminated by the respondents at numerous points throughout Arkansas. For the purpose of showing undue prejudice and preference as between intrastate and interstate shippers, the respondents instance shipments from Okay Junction to Dewitt, Ark., and from Marquette, Mo., to Dewitt. The rates on both shipments, with only the Ex Parte No. 162 increase, would have been 22 cents. The rate on the interstate shipment, including the Ex Parte Nos. 166, 168, and 175 increases, was 32 cents, while the rate on the intrastate shipment, because of the 10-percent limitation imposed by the Arkansas commission with respect to the Ex Parte No. 166 increase was 30 cents. A mere disparity in rates is not a valid basis for a finding of undue preference and prejudice. Evidence to sustain a finding that intrastate rates are in violation of section 13 (4) in that, in their relation to interstate rates, they unduly prejudice persons or localities, must be of equal dignity and probative value as evidence necessary to sustain a finding under section 3. *Virginia Intrastate Coal Rates*, 287 I. C. C. 245, 252. No shipper or receiver of interstate shipments of cement testified that it was disadvantaged by reason of the lower intrastate rates on cement.

The Ideal Cement Company opposes any further increase in the intrastate rates. It was admitted that under the increased rates on cement as sought by the respondents there would be an annual increase in the latter's revenues of about $38,760. It compares the Arkansas rate scale with scales of rates on cement

applying in other States and since the Arkansas rates are somewhat higher in some instances, the contention is that no additional increase should be permitted. Substantially the same contention has been urged upon us in prior proceedings of this nature. The determination of the lawfulness of intrastate rates in Arkansas in their relation to interstate rates must be based upon a consideration of the circumstances and conditions as they exist in that State. Comparisons with intrastate rates in other States cannot be accepted as determinative of the lawfulness of the Arkansas intrastate rates. See *Louisiana Interstate Freight Rates and Charges*, 291 I. C. C. 279, 288.

Other testimony of protestants.—In denying the increases sought on the excepted commodities here considered, the Arkansas commission concluded that such increases would result in reductions rather than increases in the respondents' revenues. It is contended by the other protestants that unjust discrimination against interstate commerce has not been proven, at least as to sand, crushed stone, and gravel; that the voluntary action of the respondents, or some of them, in providing low commodity rates within the States of Texas and Missouri has the effect of retarding the industrial development of Arkansas to the advantage of those States; and that due consideration of the effect of the intrastate rates in Texas and Missouri will not permit us to require establishment of rates on the interstate levels within Arkansas.

The Aluminum Company of America and the Reynolds Metal Company use large volumes of crushed stone as a fluxing agent in refining crude ore in the production of aluminum at Bauxite Junction, Ark. Such crushed stone is produced at Myersville Spur and Limedale Spur. Their position is that crushed stone, when moving for fluxing purposes, should have

a lower base rate than crushed stone when moving for highway construction. They state that fluxing limestone is a physically different form of limestone than crushed stone used as a road aggregate, and that it is a lower grade, lower priced, heavier loading commodity, and moves in much larger and more regular volume than the road-aggregate stone. The Aluminum Company of America urges that a reasonable rate on fluxing stone from Myersville Spur to Bauxite Junction would be $1.3216 per ton, which is on the level of the Texas rates on fluxing and other industrial stone, and includes all authorized increases. That rate is compared with the present rate of $1.37 and the proposed rate of $1.87 on crushed stone.

No separate classification for fluxing stone is provided in the respondents' Arkansas intrastate tariffs, nor in their interstate tariffs publishing rates to and from Arkansas. The same rates apply as on crushed stone. Whether or not a separate classification should be provided on this commodity within Arkansas presents an issue which we understand is now pending in a complaint proceeding before the Arkansas commission, and which is beyond the scope of this proceeding.

The Reynolds Metals Company states that the present rates on crushed stone, under which fluxing stone moves in Arkansas, are abnormally high when compared with intrastate rates on fluxing stone in other States and with interstate rates to and within the same general territory. There is no indication that the intrastate rates as proposed would exceed those maintained on interstate shipments of crushed stone generally in this territory. It is shown that the respondents are being deprived of at least $370,585 annually on Arkansas intrastate shipments of crushed stone moving for fluxing purposes. The aggregate

annual tonnage of this commodity from Limedale Spur and Myersville Spur to Bauxite Junction, 153 miles, exceeds 730,000 tons. The average load per car is about 76 tons. Crushed stone used for fluxing purposes moves in multiple-car lots and in regular volume throughout the year. All of the movement of crushed stone for fluxing purposes is by rail, and a witness for the protestants stated that it would not be economically feasible to use trucks for its transportation. Prior to the authorized increases as applied on interstate traffic, the rates on crushed stone, both interstate and intrastate, were on the same level.

Respondents' position in general.—It is the respondents' position that Arkansas intrastate traffic has the ability to bear the full increases sought to the same extent as interstate traffic to, from, and through points in that State, and that no justification exists for the failure of this Arkansas traffic to bear its fair share of the national transportation burden. They urge that they should be permitted to exercise managerial discretion in maintaining, as far as practicable, uniformity in the rate structure both as to their interstate and intrastate rates in order to effect an equitable distribution of the transportation burden, and that the revenue loss being sustained, because these commodities have been denied the full interstate increases, is of such magnitude as to cast a substantial burden upon respondents' interstate operations, to a degree that makes the discrimination undue, unreasonable, and unjust.

General discussion.—The respondents are seeking to secure from Arkansas intrastate freight traffic a contribution to maintenance and operating expenses more nearly proportionate to the contribution made by that traffic before the Ex Parte Nos. 166, 168, and 175 increases were authorized. The intrastate rates in-

creased as proposed would in no instance, so far as appears, exceed the level of the interstate rates to, from, or through points in Arkansas. The protestants contend that the present intrastate rates are just and reasonable, and that to increase the intrastate rates as proposed would cause some diversion of shipments to the motor trucks. As proof that additional revenues would be realized under their proposal, the respondents refer to statistics showing the tonnage of the principal Arkansas carriers and the revenues derived therefrom for the year 1946 as compared to the following successive years through 1953. The final 20-percent increases authorized in Ex Parte No. 162 did not become effective until January 1, 1947. As hereinbefore stated, corresponding ~~increases were~~ authorized for Arkansas intrastate transportation, without exception. From such a comparison, it appears that both the tonnages and the revenues for the later years show an increase over the year 1946 despite the increased rates that became effective on January 1, 1947.

The Arkansas commission, in excepting the instant commodities from the increases, did not find that the carriers were not in need of additional revenues, nor that the proposed rates would be unreasonable, but that, in its opinion, the additional revenues would not materialize. On the basis of the record before us, we cannot share in that opinion. As stated, it is estimated by the respondents that the proposed increases will amount to at least $1 million annually. While an aggregate annual increase in revenue may not materialize to the full extent anticipated by them, the record is convincing that their revenue position, under the increases on each commodity as proposed, would improve substantially.

The evidence is persuasive that Arkansas intrastate traffic is no less able to bear the full increases sought than interstate traffic to, from, and through Arkansas. The increases thus sought on Arkansas traffic are a part of the nationwide increases which were authorized in Ex Parte Nos. 166, 168, and 175, and made effective on interstate rail traffic throughout the country, including that to, from, and through Arkansas, and which has been authorized and made effective also on intrastate traffic generally within most of the States. The carriers' need for additional revenue to meet increased operating expenses, as found in those proceedings, was the underlying basis for the increases authorized. These increased operating costs were not confined to interstate traffic, but were and are incurred also on Arkansas intrastate traffic. To the extent that the intrastate traffic fails to bear its fair proportionate share of the increased operating expense by providing additional revenue commensurate with that now provided by the interstate traffic, it places an undue burden upon interstate commerce.

Findings and conclusions.—We find and conclude that:

1. The conditions incident to the intrastate transportation of freight in Arkansas are not more favorable than those incident to the interstate transportation between Arkansas and adjoining States.

2. The amounts and percentages by which interstate freight rates and charges between points in Arkansas and points in adjoining States were increased, as authorized in Ex Parte Nos. 166, 168, and 175, are just and reasonable.

3. The present Arkansas intrastate rates and charges on the commodities listed in the appendix hereto, imposed by authority of the State, are generally on a lower level than the interstate rates and

arges, and traffic moving thereunder fails to pro-
ce its fair share of the earnings required to yield
venue sufficient to enable the respondents, under
nest, economical, and efficient management, to pro-
le adequate and efficient railway transportation
rvice at the lowest cost consistent with the furnish-
g of such service, and thereby accomplish the pur-
se of the act, as set forth in the national trans-
rtation policy declared by the Congress, to develop
d preserve a national transportation system ade-
ate to meet the needs of the commerce of the
nited States, of the postal service, and of the na-
nal defense; the burden thus cast upon interstate
mmerce is undue in and to the extent that these
rastate rates and charges are less than they would
on the bases herein approved; and these intrastate
tes and charges cause, and for the future will
use, undue, unreasonable, and unjust discrimination
ainst interstate commerce.

4. With respect to sand and gravel, and agricultural
nestone, the evidence establishes that there is active
mpetition between persons and localities engaged
interstate commerce between points in Arkansas
d points in other States, on the one hand, and per-
ns and localities engaged in intrastate commerce in
rkansas, on the other, and that the existing dispari-
s between the current interstate and intrastate rates
these commodities cause undue and unreasonable
vantage to and preference of intrastate shippers
d localities, and undue and unreasonable prejudice
d disadvantage to interstate shippers and localities.

5. The undue and unreasonable advantage, prefer-
re, and prejudice, and the undue, unreasonable, and
just discrimination herein found to exist should be
moved by applying to the Arkansas intrastate rates
d charges on the commodities embraced herein, the

same respective increases as are, and for the future may be, maintained by the respondents on like interstate traffic between points in Arkansas and adjoining States under our authorizations in Ex Parte Nos. 166, 168, and 175.

6. The establishment of increases in intrastate rates and charges provided in finding 5 will not result in unreasonable rates or charges, nor in rates or charges that are unreasonable in relation to interstate rates or charges, and will increase respondents' revenues by approximately $1 million annually.

7. The increased revenues to the respondents which will result from the increased rates and charges as provided in finding 5 are required from intrastate traffic in Arkansas in order to enable the respondents to furnish adequate and efficient railway transportation service.

The foregoing findings and conclusions are without prejudice to the right of the authorities of the State of Arkansas, or of any other interested party, to apply for a modification thereof as to any individual intrastate rate or charge affected thereby, on the ground that such rate or charge is not related to the interstate rates and charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act.

An order carrying into effect the foregoing findings and conclusions will be entered, unless this Commission is notified by the Arkansas commission, within 30 days from the date of the service of this report, that it will permit the increases required to remove the unlawfulness herein found to exist.

HUTCHINSON, *Commissioner*, concurring:

I concur in the affirmative findings in the report. However, I would also find that the intrastate rates on cement cause undue and unreasonable advantage to and preference of intrastate shippers and localities, and undue and unreasonable prejudice and disadvantage to interstate shippers and localities. The Commission has made such findings in a number of cases upon evidence no more detailed than that in the present record. See, for example, *North Carolina Intrastate Freight Rates and Charges*, 293 I. C. C. 541, wherein affirmative findings of undue prejudice were made as to several commodities upon a showing that both interstate and intrastate shipments were made to the same destinations within the State. Similar findings are warranted here.

I am authorized to state that Commissioners JOHNSON and MITCHELL concur in this expression.

Commissioner FREAS dissents.

Commissioner WALRATH did not participate in the disposition of this proceeding.

APPENDIX

Specific exceptions to the increases authorized in Ex Parte Nos. 166, 168, and 175 on Arkansas intrastate traffic

Commodities on which exceptions were made		Ex Parte No. 166 increase		Ex Parte No. 168 increase		Ex Parte No. 175 increase	
		Intrastate	Interstate	Intrastate	Interstate	Intrastate	Interstate
		Percent	*Percent*		*Percent*	*Percent*	*Percent*
Sand and gravel, crushed stone, agricultural limestone	Open cars	No increase	20, maximum 1.5 cents [1]	No increase	8	6	12
	Closed cars	No increase	20, maximum 3 cents [1]	No increase	8	[2]	[2]
Brickbats, crushed brick, broken saggers, crushed tile	Open or closed cars	No increase	20, maximum 6 cents [1]	No increase	8	[2]	[2]
Chatt, roofing granules, crushed shells	Open cars	No increase	20, maximum 1.5 cents [1]	No increase	8	[2]	[2]
	Closed cars	No increase	20, maximum 3 cents [1]	No increase	8	[2]	[2]
Cinders (coal), slag	Open or closed cars	No increase	20, maximum 1.5 cents [1]	No increase	8	[2]	[2]
Clay, fire, crude, clay, shale	Open cars	No increase	20, maximum 1.5 cents [1]	No increase	8	[2]	[2]
	Closed cars	No increase	20, maximum 6 cents [1]	No increase	8	[2]	[2]
Crushed sewer pipe, lime sludge, oyster-shell screenings, broken clay retorts, soil	Open or closed cars	No increase	20	No increase	8	[2]	[2]
Silica sand	Open cars	No increase	20, maximum 1.5 cents [1]	No increase	8	6	12
	Closed cars	No increase	20, maximum 3 cents [1]	No increase	8	6	15
Riprap	Open cars	No increase	20, maximum 1.5 cents [1]	No increase	8	[2]	[2]
	Closed cars	No increase	20	No increase	8	[2]	[2]
Asphalt rock, coated, stone, coated	Open or closed cars	No increase	20, maximum 3 cents [1]	No increase	8	[2]	[2]
Cement	Open or closed cars	10, maximum 4 cents [1]	20, maximum 4 cents [1]	[2]	[2]	[2]	[2]

[1] Per 100 pounds.
[2] No exception made on Arkansas intrastate traffic.

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